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Arthur S. Leonard

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Legal

ACLU Sues North Carolina on Second-Parent Adoption in Federal Court

BY ARTHUR S. LEONARD

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The American Civil Liberties Union has filed suit in the US District Court for the Middle District of North Carolina seeking a declaration that the state's ban on second-parent adoptions violates the 14th Amendment rights of same-sex couples and their children.

The action was filed on behalf of six same-sex couples and the children they are raising. In each case, one member of the couple is the legal parent of the child and the other has no legal relationship with the child, because North Carolina statutes do not allow adoptions by unmarried co-parents and the state does not allow or recognize marriages of same-sex partners.



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A 2010 ruling by the North Carolina Supreme Court definitively construed state law to ban such adoptions, thus ending a practice under which some lower courts had been granting them. In other jurisdictions, the litigation about second-parent adoption has been conducted as a matter of state law, trying to persuade courts to embrace innovative interpretations of their adoption statutes. In a few jurisdictions, legislation has been enacted making it clear that second-parent adoptions are authorized.

This lawsuit appears to be the first major attempt to get a federal constitutional ruling on the question from a US court. The suit poses the issues from the perspective of the children as well as the parents, arguing that the children are deprived of due process and equal protection because the lack of a legal connection to their second parent precludes eligibility for certain government benefits and threatens the security of their families if something happens to their legal parent.

Attorneys from the ACLU's LGBT Rights Project and the ACLU of North Carolina are joined by Garrard R. Beeney of Sullivan & Cromwell LLP in New York and local counsel Jonathan D. Sasser and Jeremy M. Falcone of Ellis & Winters LLP in Raleigh.

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